

AGREEMENT

BETWEEN THE GOVERNMENT OF THE CZECH REPUBLIC
AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

REGARDING

MUTUAL ASSISTANCE IN CUSTOMS MATTERS

PREAMBLE

THE GOVERNMENT OF THE CZECH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (hereinafter jointly referred to as the „Contracting Parties“ and in the singular as a „Contracting Party“);

CONSIDERING that offences against customs legislation are prejudicial to the economic, fiscal, social and commercial interests of their respective countries as well as to the legitimate interests of trade;

CONSIDERING the importance of assuring the accurate assessment of customs duties, taxes, fees or charges on importation or exportation of goods, as well as the proper implementation of provisions of prohibition, restriction and control;

CONVINCED that efforts to prevent offences against customs legislation and efforts to ensure accurate assessment of import and export duties, taxes, fees or charges can be rendered more effective through co-operation between their Customs Authorities;

HAVING REGARD TO the Recommendation of the Customs Co-operation Council on mutual administrative assistance of December 5, 1953;

HAVING REGARD ALSO TO the provisions of the Single Convention on Narcotic Drugs of 1953 amended by the Protocol of 1955; and the Convention on Psychotropic Substances of 1971 drawn up under the auspices of the United Nations Organisation as well as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;

HAVE AGREED AS FOLLOWS:

DEFINITIONS

ARTICLE 1

For the purposes of this Agreement, unless the context otherwise requires:

- a) „customs legislation“ shall mean provisions laid down by law, regulations or rules concerning the importation, exportation, transit of goods or any other customs procedure, whether relating to customs duties, taxes, fees or charges levied by Customs Authorities, or to measures of prohibition, restriction or control;
- b) „offence“ shall mean any violation of customs legislation as well as any attempted violation of such legislation;
- c) „Customs Authority“ shall mean in the Czech Republic, the Ministry of Finance - General Directorate of Customs, and in the Republic of South Africa, the South African Revenue Service;
- d) „requesting Customs Authority“ shall mean the competent Customs Authority of a Contracting Party which makes a request for assistance in customs matters;
- e) „requested Customs Authority“ shall mean the competent Customs Authority of a Contracting Party which receives a request for assistance in customs matters;
- f) „person“ shall mean any natural or legal person;
- g) „information“ shall mean data in any form, documents, reports or certified or authenticated copies thereof or other communications;
- h) „narcotic drugs and psychotropic substances“ shall mean the products and substances defined as such by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988;
- i) „substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances“ shall mean substances listed in the Annex to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988;
- j) „controlled delivery“ shall mean an operation during which the Customs Authorities of the Contracting Parties, in accordance with their legislation, shall maintain surveillance on or allow to pass through their territories narcotic drugs or psychotropic substances or substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, with a view to detecting offences linked to the importation or exportation of these products and to identifying persons involved in the commission of such offences.

SCOPE OF AGREEMENT

ARTICLE 2

1. The Contracting Parties shall, through their Customs Authorities and in accordance with the provisions set out in this Agreement, afford each other mutual assistance:
 - a) in order to ensure that their customs legislation is properly observed;
 - b) in order to prevent, investigate and combat offences against customs legislation;
 - c) in cases concerning delivery or notification of documents regarding the application of customs legislation.
2. Assistance within the framework of the Agreement shall be rendered in accordance with the legislation in force in the territory of the State of the requested Contracting Party and within the competence and resources of the requested Customs Authority. If necessary, a Customs Authority can arrange for assistance to be provided by another competent authority in accordance with the legislation in force in the territory of the State of the requested Contracting Party.
3. The Agreement shall not provide for the recovery in the territory of the requested Contracting Party of customs duties, taxes and any other charges incurred in the territory of the requesting Contracting Party.
4. The Agreement shall apply to the customs territories of the States of both Contracting Parties.

COMMUNICATION OF INFORMATION

ARTICLE 3

1. The Customs Authorities shall, on their own initiative or upon request, supply to each other all information which may help to ensure accuracy in:
 - a) the assessment of customs duties, taxes, fees and charges levied by Customs Authorities and, in particular, information which may help to determine the customs value of goods and to establish their tariff classification;
 - b) the implementation of import and export prohibitions and restrictions;
 - c) the application of national rules of origin not covered by other contractual arrangements concluded by one or both of the Contracting Parties.

2. If the requested Customs Authority does not have the information asked for, it shall seek that information by all means available in accordance with the legislation in force in the territory of the State of the requested Contracting Party.
3. The requested Customs Authority shall seek the information as if it was acting on its own account.

ARTICLE 4

The Customs Authorities shall, upon request, supply to each other any information showing that:

- a) goods imported into the territory of the State of one Contracting Party have been lawfully exported from the territory of the State of the other Contracting Party;
- b) goods exported from the territory of the State of one Contracting Party have been lawfully imported into the territory of the State of the other Contracting Party, and the nature of the customs procedure, if any, under which the goods have been placed;
- c) goods which are granted favourable treatment upon exportation from the territory of the State of one Contracting Party have been duly imported into the territory of the State of the other Contracting Party, it being understood that information shall also be provided on any customs control measures to which the goods have been subjected.

ARTICLE 5

The Customs Authority of one Contracting Party shall, on its own initiative or upon request, supply to the Customs Authority of the other Contracting Party all information likely to be of use to it relating to offences against customs legislation and, in particular, regarding:

- a) persons known to have committed an offence or suspected of doing so;
- b) goods known to be the subject of illicit traffic;
- c) means of transport and containers, which are suspected of being used in committing offences in the territory of the State of the other Contracting Party;
- d) new ways and means employed in committing offences.

ARTICLE 6

1. The Customs Authority of one Contracting Party shall, on its own initiative or upon request, supply to the Customs Authority of the other Contracting Party reports, records of evidence or certified copies of documents giving all available information on activities, detected or planned, which constitute or appear to constitute an offence against the customs legislation in force in the territory of the State of that Contracting Party.
2. Original files and documents shall be requested only in cases where certified copies would be insufficient. Originals which have been transmitted shall be returned without delay as soon as the reason for which they had been provided to the Customs Authority of the other Contracting Party ceases to exist.

ARTICLE 7

The documents provided for in this Agreement may be replaced by computerised information produced in any form for the same purpose. All relevant information for the interpretation or utilization of the material should be supplied at the same time.

SURVEILLANCE OF PERSONS, GOODS AND MEANS OF TRANSPORT

ARTICLE 8

The Customs Authority of one Contracting Party shall, within its competence and resources, on its own initiative or upon request of the Customs Authority of the other Contracting Party, maintain surveillance over:

- a) the movements and, in particular, the entry into and exit from its territory, of persons known to have committed an offence, or suspected of doing so;
- b) suspect movements of goods and means of payment notified by the requesting Customs Authority as giving rise to substantial illicit trade in the territory of that Contracting Party;
- c) places used for storing goods which may be used in connection with substantial illicit trade in the territory of the requesting Contracting Party;
- d) means of transport and containers which are suspected of being used in committing offences within the territory of the requesting Contracting Party.

CONTROLLED DELIVERY

ARTICLE 9

- 1 Within the limits of the legislation of each Contracting Party, the Customs Authorities of the Contracting Parties shall co-operate, as necessary, in the context of international controlled deliveries of narcotic drugs, psychotropic substances or substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, in order to detect offences relating to such goods and identify persons committing such offences.
- 2 Illicit shipments subject to Controlled Delivery may, by mutual agreement of the competent authorities of the Contracting Parties, be intercepted and allowed to continue their journey either untouched, or after the narcotic drugs or substances mentioned in paragraph 1 of this Article have been removed or replaced in whole or in part.
- 3 Decisions concerning the use of Controlled Delivery are to be taken on a case-by-case basis, and may, if necessary, take into account financial arrangements and understandings between the competent authorities of the Contracting Parties.

INQUIRIES

ARTICLE 10

1. Upon request, the requested Customs Authority shall initiate official inquiries concerning operations which are or appear to be contrary to the customs legislation in force in the territory of the State of the requesting Contracting Party. It shall communicate the results of such inquiries to the requesting Customs Authority without delay.
2. These inquiries shall be conducted under the legislation in force in the territory of the State of the requested Contracting Party. The requested Customs Authority shall proceed as though it was acting on its own account.
3. The requested Customs Authority may allow officials of the requesting Customs Authority to be present at such inquiries.
4. When representatives of the Customs Authority of one of the Contracting Parties are present in the territory of the State of the other Contracting Party, pursuant to this Agreement, they must at all times be able to furnish proof of their official capacity. They shall not be in uniform nor carry arms.

EXPERTS AND WITNESSES

ARTICLE 11

1. If requested by the courts or the authorities of one Contracting Party, in connection with offences against customs legislation brought before them, the Customs Authority of the other Contracting Party may authorise its officials to appear as experts or witnesses before those courts or authorities. Such officials shall give evidence regarding facts established by them in the course of their duties. The request for appearance must clearly indicate in what case and in what capacity the official is to appear.
2. The official requested to appear as a witness or expert has the privilege to refuse to give evidence or a statement, if he is entitled or obliged to do so by virtue of the laws of his own State or those of the requesting Contracting Party.
3. Where an official requested to appear as a witness is entitled to diplomatic or consular immunity, the requested Contracting Party will sympathetically consider a waiver of immunity under such conditions as it determines to be appropriate.

USE OF INFORMATION

ARTICLE 12

1. Information received under this Agreement shall not be used for purposes other than those specified in the Agreement, without the written consent of the Customs Authority which furnished them. These provisions are not applicable to information concerning offences relevant to narcotic drugs and psychotropic substances. Such information shall be transmitted to the competent authorities directly involved in the fight against illicit trafficking of such drugs and substances.
2. Any information communicated in whatever form pursuant to the Agreement shall be of a confidential nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to the same kind of information under the legislation in force in the territory of the State of the Contracting Party which received it.
3. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for violation of customs legislation.
4. In accordance with the purposes and within the scope of the Agreement, the Customs Authorities of the Contracting Parties may, however, use as evidence information obtained:
 - a) in their records of evidence, reports and testimonies; and
 - b) in proceedings and charges brought before their courts.

The use made of such information as evidence in courts and the weight to be attached thereto shall be determined in accordance with national legislation.

PERSONAL DATA PROTECTION

ARTICLE 13

1. For the purpose of this Agreement „Personal Data“ shall mean any data that can be related to a specific natural person and/or any conclusion relating to the person that can be drawn from the data defined above.
2. In accordance with the legislation of the Contracting Parties, the protection of personal data shall at least be subject to the following conditions:
 - a) personal data shall not be transmitted whenever there are reasonable grounds to believe that the transfer or the use made of the data transmitted would be contrary to the basic legal principles of one of the Contracting Parties, and, in particular, if the person concerned would suffer undue disadvantages. Upon request of the Customs Authority furnishing personal data, the receiving Customs Authority shall inform the furnishing Customs Authority of the use made of the information supplied and of the results achieved;
 - b) personal data may only be transmitted to Customs Authorities and other law enforcement authorities, and in the case of need for prosecution purposes, to public prosecution and judicial authorities. Such information shall not be communicated to persons other than those required to use it for such purposes unless the authorities supplying the information expressly agree and the law governing the authorities which receive the data allows such communication;
 - c) the requested Customs Authority must ascertain the validity and correctness of the personal data to be submitted. In case the requested Customs Authority finds that incorrect or restricted personal data have been submitted, it must inform the requesting Customs Authority of this fact without delay. The requesting Customs Authority shall correct, destroy or delete the personal data, if so required;
 - d) the requested Customs Authority shall together with the personal data provide information on the required deadline regarding data deletion according to the legislation of its State. Personal data shall be deleted when the need for their use ceases to exist;
 - e) the Customs Authorities of the Contracting Parties shall keep a register on personal data submitted or received, and effectively protect any personal data against unauthorised access, modification, publication, damage or destruction.

DELIVERY AND NOTIFICATION

ARTICLE 14

1. Upon request, the requested Customs Authority shall, in accordance with the legislation in force in the territory of the State of the requested Contracting Party, deliver or notify to the persons concerned, residing or established in its territory, all documents and decisions falling within the scope of this Agreement, which emanate from the requesting Customs Authority.
2. If the requesting Customs Authority so wishes, delivery may be made or evidenced by a particular method, provided that the requested procedure can be complied with under the legislation and practice of the requested Contracting Party. Evidence of delivery may take the form of a dated and certified acknowledgement of receipt by the person concerned or of a certificate of the competent authority in the requested Contracting Party, indicating the method and date of the delivery.

FORM AND SUBSTANCE OF REQUESTS FOR ASSISTANCE

ARTICLE 15

1. Requests pursuant to this Agreement shall be made in writing. Documents necessary for the execution of such requests shall accompany the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing without delay.
2. Requests pursuant to paragraph 1 of this Article shall include the following information:
 - a) the requesting Customs Authority;
 - b) the measure requested;
 - c) the object of and the reason for the request;
 - d) the legislation and other legal elements involved;
 - e) details as exact and comprehensive as possible regarding persons being the target of the inquiries;
 - f) a summary of the relevant facts, except in cases provided for in Article 14.
3. Requests shall be submitted either in English or in another language acceptable to the requested Customs Authority.
4. If a request does not meet the formal requirements, its correction or completion may be demanded. However, the ordering of precautionary measures shall not be affected thereby.

EXCEPTIONS FROM THE LIABILITY TO RENDER ASSISTANCE

ARTICLE 16

1. If the requested Customs Authority considers that the assistance sought would infringe upon the sovereignty, public order, security or other essential interests of the requested Contracting Party or would involve violation of an industrial, commercial or professional secret in the territory of the State of that Contracting Party, it may refuse to provide such assistance, provide it partly or provide it subject to certain conditions or requirements.
2. If a request for assistance cannot be complied with, the requesting Customs Authority shall be notified without delay and shall be informed of the reasons for the refusal to provide assistance.
3. If a requesting Customs Authority asks for assistance which it would itself be unable to give if asked to do so by the requested Customs Authority, it shall draw attention to that fact in its request. Compliance with such a request shall be within the discretion of the requested Customs Authority.

COSTS

ARTICLE 17

1. The Customs Authorities of the Contracting Parties shall not claim the reimbursement of costs incurred in the execution of this Agreement, with the exception of expenses for experts, witnesses, interpreters and translators.
2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Customs Authorities shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

IMPLEMENTATION

ARTICLE 18

1. The assistance provided for under this Agreement shall be supplied directly between the Customs Authorities of the Contracting Parties. In order to facilitate such assistance the Customs Authorities may arrange for their investigation services to be in direct communication with each other.
2. The Customs Authorities shall jointly consult regarding any administrative directives necessary for the implementation of the Agreement. These directives shall include a list of persons responsible for the application of the Agreement.

3. The Customs Authorities shall endeavour by mutual accord to resolve problems or questions arising from the interpretation or application of the Agreement.
4. Diplomatic means shall be used to endeavour to settle any differences for which no solutions can be found.

REVIEW AND AMENDMENT

ARTICLE 19

1. Upon request, the Customs Authorities of the Contracting Parties may agree to meet in order to review this Agreement or discuss any other customs matters which arise from the implementation of the Agreement.
2. The Agreement may also be amended if the Contracting Parties agree to such amendment in writing.
3. The provisions of paragraph 1 of Article 20 shall apply equally with regard to the entry into force of any such amendment.

ENTRY INTO FORCE AND TERMINATION

ARTICLE 20

1. Each Contracting Party shall notify the other Contracting Party through the diplomatic channel of the completion of its legal requirements for the entry into force of this Agreement. The Agreement shall enter into force sixty days after the date of the last notification.
2. The Agreement may be terminated by either Contracting Party by giving written notice to the other Contracting Party through the diplomatic channel.
3. The Agreement shall cease to be effective ninety days after the date of receipt of such notice. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Prague on 20 September in 2000, in two original copies in the English language.

For the Government
of the Czech Republic

Pavel Vošalík
Ambassador Extraordinary and
Plenipotentiary of the Czech Republic
to the Republic of South Africa

For the Government
of the Republic of South Africa

Jacob Zuma
Vice-President
of the Republic of South Africa